

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 23 2007

**SENSITIVE**

In the Matter of )

MURs 5817, 5827, 5829, 5836, )

~~5847~~ 5852, 5858, and 5863 )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

DEBATE CASES (From The '06 CYCLE) )

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated  
matters) and are deemed inappropriate for review.

are forwarded to the Commission with a recommendation for dismissal. The  
Commission has determined that pursuing low-rated matters compared to other higher rated  
matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to  
dismiss these cases.

The Office of General Counsel scored MURs 5817, 5827, 5829, 5836, 5847, 5852,  
5858, and 5863 as low-rated matters. In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the  
complainants challenged whether the debate staging organizations and entities used and/or  
properly construed pre-established objective criteria in order to determine whether a  
particular candidate could participate in their debate.<sup>2</sup> In MURs 5827 and 5829, the

<sup>2</sup> 11 C.F.R. § 110.13(c) provides that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use the nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate."

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1 complainants claimed that the staging organization set up the seating for the debate in order  
2 to advance one candidate over another in violation of 11 C.F.R. § 110.13(b)(2).<sup>3</sup>

3 In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the complainants were third party  
4 candidates who appeared to receive marginal electoral support and evidenced little to no  
5 campaign organization. The staging organizations and entities in these cases claimed they  
6 applied pre-established objective criteria in assessing whether to include or exclude  
7 candidates from their debates.

8 In MURs 5827 and 5829, the complaints centered on the favorable seating assigned to  
9 one candidate's supporters over another. The respondents in these matters asserted that the  
10 seating design was unintentional and in any case did not violate the Commission's  
11 regulations. Additionally, a claim that a \$200 corporate contribution was received by the  
12 staging organization was refuted.

13 In reviewing the allegations and responses in these matters, and in furtherance of the  
14 Commission's priorities and resources, relative to other matters pending on the Enforcement  
15 docket, the Office of General Counsel believes that the Commission should exercise its  
16 prosecutorial discretion and dismiss these matters. *See Heckler v. Chaney*, 470 U.S. 821  
17 (1985).

### 18 RECOMMENDATION

19 The Office of General Counsel recommends that the Commission dismiss  
20 MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863, close the files effective two  
21 weeks from the date of the Commission vote, and approve the appropriate letters. Closing

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<sup>3</sup> 11 C.F.R § 110.13(b) provides that "[t]he structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that: (1) Such debates include at least two candidates; and (2) The staging organization(s) does not structure the debates to promote or advance one candidate over another."

these cases as of this date will allow CELA and General Law and Advice the necessary time  
to prepare the closing letters and the case files for the public record.

Thomaseia P. Duncan  
Acting General Counsel

3/22/07  
Date

BY:

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Attachments:

Narratives in MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863

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5 **MUR 5847**

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7 **Complainant:** Werner Lange

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9 **Respondents:** City Club of Cleveland and  
10 James H. Foster, as Executive Director  
11

12  
13 **Allegations:** Complainant alleges that he was improperly excluded from a debate held at  
14 the City Club of Cleveland between the Republican and Democratic candidates for Ohio's  
15 14th Congressional District. Specifically, the complainant asserts that the City Club of  
16 Cleveland violated 11 C.F.R. § 110.13(c) by using the fact that Rev. Lange was not  
17 nominated by a political party, as the sole factor for his exclusion from the debate.  
18

19 **Response:** The City Club of Cleveland responded that it is a membership organization  
20 that frequently schedules debates between candidates for public office. Although the  
21 complainant was offered the opportunity to appear individually before the City Club of  
22 Cleveland, he nevertheless insisted that he be given the opportunity to debate with the  
23 other candidates. The City Club of Cleveland could not find evidence that the  
24 complainant received any recognition in pre-election polling. Furthermore, the  
25 complainant provided no literature or evidence that he was running a serious campaign.  
26 Additionally, the complainant was not invited to participate in the Cleveland Plain Dealer  
27 Editorial Board interview, which was an important factor in determining the  
28 complainant's election viability.  
29

30 **General Counsel's Note:** The complainant received 3% of the vote in the general  
31 election and is registered with, and reporting to, the Commission.  
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33 **Date complaint filed:** October 18, 2006

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35 **Responses filed:** November 24, 2006

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